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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA  
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9 THE BANK OF NEW YORK AS TRUSTEE  
10 FOR THE CERTIFICATEHOLDERS  
11 CWALT, INC. ALTERNATIVE LOAN  
12 TRUST 2006-OA2 MORTGAGE PASS  
13 THROUGH CERTIFICATE, SERIES  
14 2006-OA2

15 Plaintiff,

16 v.

17 RONALD-GARCIA SANTOS, aka Ronald  
18 G. Santos, an individual; PAVAROTTI  
19 TRUST #8197, NV WEST SERVICING,  
20 LLC, as Trustee, DOES 1-10; and ROE  
21 CORPORATIONS 1-10,

22 Defendants.

Case No. 2:16-cv-02579-MMD-PAL

ORDER

(Def.'s Motion to Stay – ECF No. 43)

23 This case arises out of a homeowner association's ("HOA") foreclosure and  
24 involves the notice provisions applicable to foreclosure sales under Nevada Revised  
25 Statutes ("NRS") Chapter 116. Before the Court is Defendant Pavarotti Trust #8197, NV  
26 West Servicing, LLC's ("Pavarotti") Motion to Stay. (ECF No. 43.) Plaintiff Bank of New  
27 York ("BONY") has opposed (ECF No. 46), and Pavarotti has replied (ECF No. 47).

28 A district court has discretionary power to stay proceedings in its own court. *Landis*  
*v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). "A trial court may, with propriety, find it is  
efficient for its own docket and the fairest course for the parties to enter a stay of an action  
before it, pending resolution of independent proceedings which bear upon the case."  
*Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding  
whether to grant a stay, courts should consider "the possible damage which may result

1 from the granting of a stay, the hardship or inequity which a party may suffer in being  
2 required to go forward, and the orderly course of justice measured in terms of the  
3 simplifying or complicating of issues, proof, and questions of law which could be expected  
4 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)  
5 (quoting *Landis*, 299 U.S. at 268). Courts should also consider “the judicial resources that  
6 would be saved by avoiding duplicative litigation.” *Pate v. DePuy Orthopaedics, Inc.*, No.  
7 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at \*2 (D. Nev. Aug. 14, 2012) (quoting  
8 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

9       The Court finds that significant judicial resources will be saved if the Court refrains  
10 from issuing a decision in this case until the Nevada Supreme Court determines whether  
11 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090. (ECF No. 43 at  
12 2 (citing Nev. S. Ct. Case No. 72931).) NRS §§ 116.31168 and 107.090 prescribe two  
13 fundamentally different notice mechanisms. The first requires lenders to affirmatively  
14 request notice of foreclosure sales from HOAs. The second requires HOAs to notify  
15 lenders as a matter of course, regardless of whether a request was made.

16       The Ninth Circuit recently held the first mechanism facially unconstitutional  
17 because it impermissibly shifts the burden to lenders in violation of their procedural due  
18 process rights. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156  
19 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017). NRS § 107.090 seems to ameliorate  
20 this burden-shifting problem by requiring the HOAs to provide notice to lenders absent  
21 any request from lenders for notice; however, the Ninth Circuit has held that NRS §  
22 107.090 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit  
23 reasoned, the opt-in notice scheme would be superfluous. *Id.*

24       The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now  
25 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has  
26 hinted it will answer the question in the affirmative. *See Nationstar Mortg., LLC v. Saticoy*  
27 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada  
28 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would

1 arise in this case: did the HOA provide notice to the lender consistent with NRS §  
2 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to  
3 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied  
4 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*  
5 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at \*3 (D. Nev.  
6 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some  
7 foreclosure sales may have satisfied constitutional due process requirements (i.e., those  
8 in which HOAs gave lenders notice consistent with NRS § 107.090). Pavarotti contends  
9 that the HOA provided such notice in this case. (See ECF No. 49 at 2-3; see also ECF  
10 No. 37 at 2 (denying allegations that the HOA did not provide such notice).)

11 BONY first opposes Pavarotti’s motion on the ground that BONY will be prejudiced  
12 if the case is stayed. (ECF No. 46 at 4.) BONY explains that it has been prohibited from  
13 foreclosing under the Deed of Trust. (*Id.*) However, any damage to Plaintiff from a stay  
14 will be outweighed by the fees that all parties will surely incur from continued litigation—  
15 a decision in the proceedings before the Nevada Supreme Court could moot a decision  
16 by this Court. Until there is finality on the issue of whether NRS § 116.31168 incorporates  
17 NRS § 107.090, a stay will benefit the parties and conserve judicial resources.

18 BONY next opposes Pavarotti’s motion on the ground that Pavarotti will not incur  
19 any hardship in the absence of a stay. (*Id.* at 5.) However, all parties would suffer hardship  
20 in the form of continued litigation if this Court issued a decision that was subsequently  
21 mooted by the Nevada Supreme Court.

22 Finally, BONY opposed Pavarotti’s motion on the ground that the Court can resolve  
23 this case based on *Bourne Valley*. (*Id.* at 5-6.) The Nevada Supreme Court’s decision  
24 could render *Bourne Valley* inapplicable in this case, however, as explained *supra*.

25 It is therefore ordered that Pavarotti’s Motion to Stay (ECF No. 43) is granted. This  
26 action is temporarily stayed until resolution of the certified question in Nev. S. Ct. Case  
27 No. 72931. The stay will be lifted upon such resolution. The parties must file a status  
28 report within five (5) days from such resolution. All pending motions (ECF Nos. 36, 41)

1 are denied without prejudice and may be refiled within thirty (30) days from the Nevada  
2 Supreme Court's decision on the certified question.

3 DATED THIS 4<sup>th</sup> day of January 2018.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE